

undersigned discussed this issue with Examiner Dowling in a telephone call on March 10, 2011, for which the undersigned thanks Examiner Dowling. During the telephone call, the undersigned received an explanation that “Office policy” dictated that remarks submitted after a final Office Action are not considered if such remarks require further consideration.

Even if the Response included “new arguments”¹ (i.e. not new amendments or new evidence, but new arguments), the Applicants respectfully submit that MPEP § 714.12 requires that arguments submitted after a final Office Action be considered. MPEP § 714.12 states that “[o]nce a final rejection that is not premature has been entered in an application, applicant or patent owner no longer has any right to unrestricted further prosecution [but t]his **does not mean that no further ... argument will be considered.**” (Emphasis added). Furthermore, MPEP § 706.07(f) specifies that replies after final should be considered by Office personnel. Accordingly, the failure to “further consider” the application in light of the remarks presented in the Response is error.

Furthermore, the Advisory Action failed to answer all material traversed. MPEP § 707.07(f) requires that Examiners answer all material traversed without excepting after-final Office Action responses or “new arguments.” Accordingly, the failure to answer all material traversed, even assuming that the Response included “new arguments,” is error.

¹ In any event, the Applicants respectfully traverse the finding that the Response included “new arguments.” Pages 3-4, for example, discuss similar or the same issues raised in a previous response.

For at least these reasons, the Applicants request that the Advisory Action be vacated and that the remarks in the Response be considered. Upon consideration, the Applicants believe that the present application will be in condition for allowance. A Notice of Allowance is therefore elicited. Should the Examiner sustain any rejection of one or more claims, however, the Applicants request that all material traversed be answered in the supplemental action.

Moreover, The Applicants note that no amendments were submitted in the Response. The Advisory Action indicated that proposed amendments raise new issues that would require further consideration. The Applicants believe that this was an inadvertent error, but raises it to be clear on the record that no amendments were submitted in the Response.

No fee is believed to be due for the submission of this paper. If any fees are due for this submission, the fees may be charged to Deposit Account number 11-0855. If there are any matters that can be addressed by telephone, the Examiner is respectfully urged to contact the undersigned attorney at (404) 745-2520.

Respectfully submitted,

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